Received
Fees required
to be paid on
delivery

Judge Davis
Feb 24
Miller
Swayne

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~949.~~ 123

JAMES B. WALKER, PLAINTIFF IN ERROR,

vs.

WILLIAM H. WHITEHEAD.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

FILED OCTOBER 16, 1871.

Dec. 2, 1872

SUPREME COURT OF THE UNITED STATES.

No. 349.

JAMES B. WALKER, PLAINTIFF IN ERROR,

vs.

WILLIAM H. WHITEHEAD.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

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1 TRANSCRIPT OF RECORD.

Complaint.

STATE OF GEORGIA,
County of Baker:

To the superior court of said county:

The petition of James B. Walker showeth that William H. Whitehead, of said county, is indebted to your petitioner in the sum of seven thousand two hundred and nineteen dollars and forty-seven cents, besides interest, on a promissory note, dated on the 28 day of March, 1864, and due on the 19 day of March after date; a copy of which said promissory note is hereto annexed, and which said promissory note the said defendant refuses to pay:

Wherefore your petitioner prays process may issue, requiring the said defendant, personally, or by attorney, to be and appear at the next superior court, to be held in and for said county, to answer your petitioner's complaint.

HINES & HOBBS,
Pl'ff's Att'ys.

2 *Copy note sued on.*

$7,219 47.] AUGUSTA, GA., 28 *March*, 1864.

On the nineteenth day of March next I promise to pay to the order of James B. Walker, at either of the banks in this city, seven thousand two hundred and nineteen $\frac{47}{100}$ dollars, for value received.

(Signed) WILLIAM H. WHITEHEAD.

Received on the within, 1st Jan'y, 1867, ($1,361 23,) thirteen hundred and sixty-one $\frac{23}{100}$ dollars.

Received on the within, 26 Nov., 1868, twelve hundred dollars, ($1,200 00.)

Filed in office 31 December, 1869.

T. ALLEN, *Dep. Clk.*

Due and legal service acknowledged, and waive copy and copy process & all further service, Jan'y 1, 1870.

W. H. WHITEHEAD.

3 In Baker superior court. May term, 1870.

Plea.

JAMES B. WALKER
vs.
W'M H. WHITEHEAD. } Complaint.

And now comes the defendant, at this term of the court, by his attorneys, Lyon, De Graffenreid & Irvin, & defends the wrong and injury when, &c., and for plea and answer says that the note in said plaintiff's declaration mentioned is founded on a contract made prior to the 1st day of June, in the year 1865; that, at and after the maturity of said note, he tendered to the said plaintiff payment of the same in confed-

erate treasury notes—the only currency in circulation in this State, and at Augusta, where the same was made, where the said note was
4 given, and where it became due and payable—and the said plaintiff refused to receive the same, or any part thereof, in payment of the same; wherefore defendant pleads that the said debt be reduced, according to the principles of equity. And of this he puts himself upon the country.

And for further plea and answer in this behalf this defendant says that he lost by the result of the late war against the United States, and in consequence thereof, one hundred negroes of the value of fifty thousand dollars, and confederate securities to the amount of twenty thousand dollars; that the said plaintiff was a citizen of the Confederate States, who waged and carried on that war; that defendant now pleads these losses as an offset to the said demand of said plaintiff, as set out in his said declaration to the amount of the principal and in-
5 terest claimed to be due on the same. And of this he puts himself on the country.

LYON, DE GRAFFENREID & IRVIN,
Def't's Att'ys.

GEORGIA, *Baker County:*

Personally appeared in open court William H. Whitehead, who, being sworn, says that the facts set forth and contained in the foregoing plea are true in substance and fact.

This 21 Nov., 1870.

WILLIAM H. WHITEHEAD.

E. W. ALLEN, *Clk.*

Order dismissing case.

J. B. WALKER
vs.
W'M H. WHITEHEAD. } Complaint.

The plaintiff in the above case having failed to file with the clerk of the court an affidavit that all legal taxes, charg'able upon the debt which is the foundation of this suit, and which debt or cause of
6 action, made before the 1st day of June, 1865, have been duly paid in compliance with the provisions of sec. 2 of an act of the legislature of Georgia, approved October 13th, 1870, entitled "An act to extend the lien of set-off and recoupment as against debts contracted before the 1st day of June, 1865," and to deny to such debts the aid of the courts until the taxes thereon have been duly paid. And it further appearing that now six months have elapsed since the passage of said act, and no such affidavit has as yet been filed, it is, therefore, on motion of defendant's counsel, ordered that said suit shall be dismissed on account of the failure of the plaintiff to file such affidavit of payment of taxes within the time prescribed by the said act.

7 *Record.—Copy of bill of exceptions.*

GEORGIA, *Baker County:*

Be it remembered that the case of James B. Walker, plaintiff, vs. William H. Whitehead, defendant, being an action of complaint returnable to the May term, 1870, of Baker superior court, came on to be heard before his honor Peter J. Strozier, one of the judges of the supe-

rior court, then and there presiding, at the regular May term, 1871, of said Baker superior court.

And as soon as said case was called, and before the said plaintiff announced himself as being ready, the counsel for the defendant asked the clerk of the said court if any affidavit had been filed of the payment of taxes, under the act of the legislature of Georgia of date the 13 Oct., 1870; and, it being found that no such affidavit was filed, the said defendant then and there moved an order dismissing
8 said case, (and which order he then placed upon the minutes of said court.)

And to the passing of *of* which said order the said plaintiff objected, because no notice of said motion, and, in fact, no written motion was made; because said act of the 13 Octo., 1870, was unconstitutional and void, having been passed by an illegal legislature, and by a body which had sat beyond the time allowed by the constitution of the State; and that the act was further in violation of the constitution of the United States, and the constitution of the State of Georgia, and of the principles of equity and justice, and was judicial in its nature. And that said act was not applicable to this case, as the plaintiff had the right to show and did propose to show; that no taxes were payable or required on the debt, the foundation of this suit, and none had
9 been required of him by law; and that the debt sued on was not taxable under the laws of Georgia, as a good and solvent debt, as it was doubtful and not good and solvent; and that he had the right to pay such taxes at any time, and was now ready to pay any that were due on said debt; and for the further objection that said order was illegal and improvident and should not be granted.

All of which said objections were then and there overruled by the court, he holding that no excuse whatever would do away with the filing of said affidavit, and said order was granted and placed upon the minutes of said court; and said case was dismissed, as appears by the transcript of the record in this case.

And to the passing of which order, upon the said application of
10 said defendant, against the objection of his counsel, the said James B. Walker excepted, and now here assigns the same as error, and prays it may be reviewed by the supreme court.

And as the facts aforesaid do not appear of record, the said James B. Walker presents this his bill of exceptions within thirty days from the adjournment of said court, and prays it may be signed and certified by the judge presiding in said cause, and that it may become a part of the record in the same.

This May, 19, 1871.

HINES & HOBBS, *Pl'ff's Att'ys.*

11 *Certificate of judge & writ of error.*

I do certify that the foregoing bill of exceptions is true, and contains all the evidence material to a clear understanding of the errors complained of; and the clerk of the superior court of the county of Baker is hereby required and ordered to make out a complete copy of the record of said case, and certify the same to be a true and complete copy, and cause the same to be transmitted to the next term of the supreme court at Atlanta, that the errors alleged to have been committed may be considered and corrected.

This 19th May, 1871.

PETER J. STROZIER,
Judge Sup'r Court, Albany Circuit.

Service acknowledged.

Due and legal service acknowledged on the within bill of exceptions, and copy and further notice and service waived. May 22d, 1871.

LYON, DE GRAFFENREID, & IRVIN,
Def'ts Att'ys.

12 Filed in office May 30, 1871.

E. W. ALLEN, *Clerk.*

Certificate of clerk.

GEORGIA, *Baker County:*

CLERK'S OFFICE, SUPERIOR COURT,
May 30, 1871.

I, Ennis W. Allen, clerk of the superior court in and for said county of Baker, do certify that the foregoing ten pages constitute a true and complete transcript from the records and files of my office, of the case of James B. Walker, plaintiff in error, vs. William H. Whitehead, defendant in error, May term, 1871; that the accompanying bill of exceptions is the original filed in my office in said cause, and that I have also copied and filed the same in office.

And I do further certify that the superior court of said county, at which said cause was determined, adjourned on the 18 day of
13 May, 1871.

Given under my hand and seal of office.

ENNIS W. ALLEN,
Clerk Sup'r Court, Baker County.

14 Supreme court of the State of Georgia.

ATLANTA, GA., *July* 25, 1871.

The honorable supreme court met pursuant to adjournment—present, their honors O. A. Lochrane, chief justice, and H. K. McCay and Hiram Warner, associates.

JAMES B. WALKER, PL'FF IN ERROR,
vs.
WILLIAM H. WHITEHEAD, DEF'T IN ERROR.

This case came before the court upon a transcript of the record from the superior court of Baker County; and, after argument had, it is considered and adjudged by the court that the judgement of the court below be affirmed.

Warner, J., dissenting.

15 UNITED STATES OF AMERICA:

The President of the United States to the honorable the judges of the supreme court of the State of Georgia:

Because, in the record of proceedings, as also in the rendition of judgment of a plea which is in said supreme court, before you, being the highest court of law in said State in which a decision can be had, in a suit between James B. Walker, appellant, in said court, against William

H. Whitehead, in which was drawn in question the validity of the act of the said State of the 13th October, 1870, as impairing the obligation of the contract sued on, on the ground of the repugnancy of said act to that provision of the Constitution of the United States which prohibits the States from passing any law impairing the obligation of contracts, and the decision was in favor of the validity of the said act of 1870, manifest injury has happened to the great damage of the said James B. Walker, as by the complaint and judgment appears: We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly
16 and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the 1st Monday December next, in the said Supreme Court, to be then and there held, that, the record and proceeding aforesaid being inspected, the error may be corrected according to law.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, the first Monday of December, A. D. 1870.

[SEAL.] D. W. MIDDLETON,
Clerk Sup. Court U. S.

Issued 25th Sept., 1871.

17 (Indorsed:)
This writ of error allowed this 22 day of September, 1871.
JOSEPH P. BRADLEY,
Asso. Justice Sup. C't U. States.

18 United States of America to William H. Whitehead:

You are hereby cited to be and appear at the Supreme Court of the United States, to be holden in Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the United States, in a case wherein James B. Walker is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice done in that behalf.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 22nd day of September, 1871.
JOSEPH P. BRADLEY,
Asso. Justice Sup. Court U. S.

19 (Indorsed:) Citation.

STATE OF GEORGIA, *County of Bibb:*

We acknowledge due and legal service on within citation, and waive other & further service & copy this Oct. 3rd, 1871.
LYON, DE GRAFFENREID & IRVIN,
Def't's Att'ys.

20 UNITED STATES OF AMERICA.

GEORGIA, *Richmond County:*

Know all men by these presents that we, James B. Walker as principal, and John W. Wallace and Robert Schley as security, are held and firmly bound unto William H. Whitehead in the full and just sum of

five hundred dollars, ($500 00,) to be paid to the said Whitehead aforesaid, and to his administrators, executors, and assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this seventh day of September, eighteen hundred and seventy-one.

Whereas, lately at the July term, 1871, of the supreme court of Georgia, in a suit depending in said court between said James
21 B. Walker as plaintiff, and the said William H. Whitehead as defendant in error, a judgment was rendered against the said James B. Walker, and the said James B. Walker having obtained and filed a copy of the record in said case, and having obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the judgment in the aforesaid suit, and a citation directed to the said William H. Whitehead, citing and admonishing him to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., the first Monday in December next:

Now, the condition of the above obligation is such, that if the said James B. Walker shall prosecute his said writ of error to effect, and answer all damages and cost' if the said James B. Walker fail to
22 make his aforesaid plea good, then the above obligation to be void; else to remain in full force and virtue.

JAMES B. WALKER. [L. S.]
JOHN W. WALLACE. [L. S.]
ROBERT SCHLEY. [L. S.]

Sealed and delivered in presence of—
W'M A. WALTON.
JOSEPH P. CARR,
U. S. Commissioner, Southern District of Georgia.

STATE OF GEORGIA,
Clerk's Office, Supreme Court of Georgia.

I do hereby certify that this bond of James B. Walker and John W. Wallace and Robert Schley, securities, is amply good and sufficient in law to cover the sum of five hundred dollars, and that both, principal and securities, are worth more than that amount over all legal exemptions, debts, &c., &c.

This September 18th, 1871, witness my signature & seal of the supreme court of the State of Georgia, affixed the day & year above written.

[SEAL.] Z. D. HARRISON, *Clerk.*

23 Filed in my office.

Z. D. HARRISON,
Clerk Sup. C't Ga.

24 CLERK'S OFFICE SUPREME COURT OF GEORGIA,
Atlanta, Ga., October 4th, 1871.

In obedience to the original writ of error hereto attached from the Supreme Court of the United States, I have made out the foregoing 25 pages, embracing a true copy of all the record, bill of exceptions, & other papers of file in this court in the case of James B. Walker, plaintiff in error, vs. William H. Whitehead, defendant in error; and I certify that said 25 pages embrace a true copy of the record, bill of exceptions, and judgment of this court in said case delivered at the July term, 1871, as appears by the records of file in this office.

I further certify that the foregoing is a true copy of the bond given by said James B. Walker as filed, & now in my office, and that true copies of the foregoing writ of error and citation and service thereon is of file in this office.

And I further certify I have this day forwarded this transcript
25 in obeydiance to said writ of error to D. W. Middleton, esq., clerk of the Supreme Court, Washington, D. C., by regular course of mail.

Witness my hand and seal of office this October 4th, 1871.

[SEAL.] Z. D. HARRISON,
Clk S. C. Ga.

(Indorsement on cover:) No. 349. James B. Walker, plaintiff in error, vs. William H. Whitehead. Georgia Sup. Court. Filed 16th October, 1871.

In the Supreme Court of the U. S.

JAMES B. WALKER
vs.
W. H. WHITEHEAD. } No. 123.

Brief of P. PHILLIPS.

This is an action brought in the State Court of Georgia on a promissory note dated 28 March, 1864. The suit was instituted on the 1 January, 1870.

It is shown by the bill of exceptions p. 3, that as soon as the case was called, and before the plaintiff announced himself as ready for trial, the defendant moved that the case be dismissed because no affidavit had been filed of the payment of taxes under the act of 13 October, 1870.

Whereupon the following judgment was rendered—"The plaintiff having failed to file with the clerk an affidavit that all legal taxes chargeable upon the debt which is the foundation of this suit, and which debt or cause of action, made before the 1 June, 1865, *have been duly paid* in compliance with the provisions of the act approved 13 October 1870, entitled &c. &c.; and it further appearing that now six months have elapsed since the passage of said act, and no such affidavit has as yet been filed, it is therefore on motion of defendant's counsel ordered that said suit be dismissed, on account of the failure of

the plaintiff to file such affidavit of payment of taxes within the time prescribed by said act," p. 2.

The bill of exceptions further shows that the motion was opposed upon the ground that the act of 1870 was in violation of the Constitution of the United States, and of the principles of equity and justice and was judicial in its nature.

The plaintiff offered to show that no taxes were due or payable on said note under the laws of the State— that he had a right to pay them at any time, *and was now ready to pay all the taxes that were due.*

All these objections were overruled; the court holding that no excuse whatever could do away with the filing of the affidavit. (p. 3.)

The act of 13 October, 1870, is to be found in the pamphlet acts for that year at p. 31.

1 Sec. That in all suits pending, or hereafter brought in or before any Court of the State, founded upon any debt or contract or cause of action made or implied before the 1 June, 1865, or upon any other debt or contract in renewal thereof, it shall not be lawful for the plaintiff to have a verdict or judgment in his favor unless he has made it cleary to appear before the tribunal trying the same, that all legal taxes chargeable by law upon the same *have been duly paid for each year* since the making or implying of said debt or contract..

2d. Sec. In any suit now pending or hereafter brought it shall be the duty of the plaintiff within six months after the passage of this act, if the suit be pending, and at the filing of the writ, if the suit be hereafter brought, to file with the clerk of the Court of justice an affidavit, if the suit was founded on any debt or contract as described in section one, that all legal charges chargea-

bly by law upon such debts or contracts *have been duly paid*, or the income thereon *for each year since the making of the same*, and that he expects to prove the same upon the trial. And upon failure to file such affidavit as herein required, said suit shall on motion be dismissed.

The 4th section again declares it to be a condition precedent to a recovery, that "the said debt has been *regularly* given *in for taxes*, and the taxes paid."

The 5th section provide that in judgments already rendered, no levy or sale shall be made, unless an affidavit be made that all taxes "have been duly paid from the time of making said contract to the time of attaching the affidavit."

For the purpose of illustrating the design of this act, we refer to other provisions.

The 6th section provides that in all of this class of indebtedness, the defendant may offset "any losses he may have suffered by, or in consequence of the late war against the United States," whether the said losses "be from the destruction, or *depreciation* of property.',

The 7th section declares that these damages shall not be considered as "too remote or speculative, if it only appeared that they were "fairly and legitimately produced *directly or indirectly by said war, or the results thereof.*"

The 9th section provides that these losses by war may be offset against judgments already rendered.

The 14th section provides that as to such debts due to widows and minors, they are to be settled "upon the principles of equity, *taking into consideration the relative loss of property, sustained by the plaintiff and defendant.*"

The 15th section provides that the provisions of the 14th are not to apply where the defendant is in posession

of the property for the purchase of which the said contract was entered into, with this proviso, that "the defendant may elect to give up the property in his possession for which such contract was enteredin to, and such election shall be the full discharge of such indebtedness."

The judgment dismissing this suit was carried by appeal to the Supreme Court of the State where the following entry was made.

"This case came before the Court upon a transcript of the record from Baker County, and after argument had, it is considered and adjudged by the Court, that the judgment of the Court below be affirmed, Warner, J., dissenting."

Assignment of Error.

The plaintiff now assigns for error, that the judgment sustaining the validity of the act of 1870 is erroneous, and that the said act should be declared invalid as impairing the obligation of the contract sued on.

The design of the act was clearly to confiscate all debts contracted prior to 1 June, 1865.

In suits upon such contracts it is made a condition precedent, that the "said debt has deen *regularly given in for taxes, and the taxes paid.*"

It will be seen that this act does not bar the recovery until the taxes due are paid, but, it in fact, forfeits the debt if the party cannot show that he had annually paid the taxes from the time the contract was made.

The clear intent is not to collect taxes—but to confiscate rights by virtue of a penalty affixed long after the default had been made.

The bill of exceptions states that the plaintiff offered to show "that no taxes were payable or required on the debt sued on, and none were required by law; that it was not taxable as a good and solvent debt, as it was doubtful and not good, and solvent; that he had the right to pay such taxes at any time, *and was now ready* to pay any that were due."

The Court overruled these objections, holding "that no excuse whatever would do away with the filing of the affidavit."

This construction of the law, affirmed by the Supreme Court, in its retroactive effect, annuls the contract, or, in other words, takes away all remedy to enforce it.

Thus acting on the remedy, it reaches the very substance of the contract and impairs its obligation, and it is the same in effect as if the law had declared that all notes on which the annul tax had not been paid should be held null and void.

Thus viewed, it is a new and heavy penalty depriving by forfeiture a citizen of his property for a past omission of duty, which at the time was easily remedied, and with very slight change. It thus falls within the principles of Cummings v. State of Missouri. "To make the enjoyment of a right dependent upon an impossible condition, is equivalent to an absolute denial of the right under any condition, and such denial *enforced for a past act*, is nothing less than punishment imposed for that act. It is a misapplication of terms to call it anything else." (4 Wall., 327.)

See Falconer v. Campbell, 2 McLean, 196.

The law of Georgia, existing at the date of the contract, and at the time when the default was made in the alleged

non-payment of taxes, levied an ad valorum tax on all property, real and personal.

Code 797, 801.

For failure to return, or to make a false return, the only penalty provided was a double tax.

Code 835, 837, 850, 851.

The party may have incurred this double taxation and paid it, and yet, under this act, he would have no remedy on his contract.

The construction given to the statute by the Circuit Court, and affirmed by the Supreme Court, in the decision of this case, must be taken as the basis of the action here in determining the question of its validity. It is of no consequence to consider whether it is capable of a construction which would render its odiousness less palpable.

The jurisdiction of this Court cannot be avoided by averring "that it is not the validity of the act which is complained of by the plaintiff, but the construction placed upon that act by the State Court. If this construction is one which violates the plaintiff's contract, and is the one on which the defendants are acting, it is clear that the plaintiff have no relief, except in this Court, and that this Court will not be discharging its duty to see that no State legislature shall pass a law impairing the obligation of a contract unless it takes jurisdiction of such cases."

Bridge Proprietors v. Hoboken, 1 Wall., 144.

The act gives to parties whose suits were then pending six months in which to file the affidavit that the taxes "had been duly paid for each year since the making of the same." If it had been intended as a mere

method of collecting taxes, it would have given this period for their payment. It is in effect a legislative declaration confiscating all debts on which the taxes had not been duly paid. The imposing this penalty for a past delinquency is an act of confiscation. The taking away of all remedy, acts as directly upon the legal obligation of the contract, as if the law had declared that all contracts made prior to 1865, on which the taxes had not been duly paid are hereby made null and void.

Mr. Justice Bradley has taken this view of the statute and his opinion concurs with the dissenting opinion of Judge Warner of the Supreme Court of the State.

"I am clearly of opinion, (says he) that the statute is unconstitutional. It imposes upon the plaintiff conditions for a recovery which were not required to be performed when the contract was made. Conditions onerous, and if he has not paid the taxes impossible to be performed, it imposes a penalty and forfeiture for non-payment of taxes which it is conceded did not exist when the taxes were assessed and payable. It therefore not only impairs the validity of the contract, but is an *ex post facto* law. Restrictions on the remedy which naturally affect the contract, tend as much to impair its validity as laws passed to abrogate it. They differ only in degree. I have no hesitation or doubt on the subject."

Lathrop v. Brown, Am. Law Reg., October 1871, p. 639.

How far laws affecting the remedy fall within the constitutional prohibition as impairing the obligation of the contract, is considered by the Court in Van Hoffman v. City of Quincy where will be found a review of the decisions on this subject, beginning with Green v. Biddle where it was held that "if the act so changes the nature and extent of existing remedies, as materially to impair

the rights and interests of the owner, they are just as much a violation of the compact, as if they overturned his rights and interests."

4 Wall, 551.

See also, Burr v. Muscatine, 8 Wall, 583.

In reading the debates on the adoption of the Federal Constitution, we are brought to the conclusion that it was intended to go very far in prohibiting to the States the right to pass retrospective laws of any kind as operating on contracts.

In respect to the prohibition on the national legislature; (there was much debate as to its necessity.) Mr. Wilson declaring—"it will bring reflections on Congress, and proclaim that we are ignorant of the first principles of legislation." 5 Elliott's Debates, 484.

When the restriction as to the States came up, Mr. King moved "a prohibition on the States to *interfere in private contracts.*"

Mr. Madison "admitted that inconveniences might arise, but on the whole it would be overbalanced by the utility of it."

Col. Mason, "this is carrying the restraint too far. Cases will arise that cannot be forseen where some kind of interference will be proper. He mentioned the case of limiting the time for bringing actions on open account that of bonds after a certain lapse of time—asking if it were proper to tie the hands of the States from making provision in such cases."

Mr. Wilson, "The answer to these objections is, that retrospective *interferences* only are to be prohibited."

Mr. Madison, "Is not that *already done by the prohibition of ex post facto laws.*" p. 485.

On the day following this debate, Mr. Dickinson said that on examining Blackstone's Commentaries he found that the term *ex post facto* related to criminal cases only. That it would not, consequently, restrain the States from *retrospective laws in civil cases*, and that some further provision for this purpose would be requisite." p. 488.

It was finally agreed to add after the words *ex post facto*, the words, "*or law impairing the obligation of contracts.*" p. 546.

It is evident that the framers of the Constitution intended to guard against retrospective legislation, as odious in its character and condemned by the legislation of the civil as well as the common law, and by the adoption of the provision as it now stands they believed they had confined it within the narrowest limits.

P. PHILLIPS.

28 *January*, 1873.

Session act of 1870
p 30

1. Wallace 144

4 Wallace p 550

Oct 71 - American Law Register
Decision by Judge Bradley

Harvey v. Lathrop 638

Law. re Port Lantes -
Cunningham's case
4. Wall 327